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16 ELI LILLY AND COMPANY

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION

20 STATE OF CALIFORNIA <i>ex rel.</i> JAYDEEN	)	Case No. 07-cv-04911-CRB
21 VICENTE and JAYDEEN VICENTE	)	
22 Individually,	)	Assigned to: Hon. Charles R. Breyer
	)	
23 Relator,	)	<b>DEFENDANT ELI LILLY AND</b>
	)	<b>COMPANY'S SUPPLEMENTAL NOTICE</b>
24 vs.	)	<b>OF REMOVAL</b>
	)	
25	)	
26 ELI LILLY AND COMPANY,	)	
	)	
27 Defendant.	)	
	)	

**Supplemental Notice of Removal**

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2  
3           1.       On September 21, 2007, Defendant Eli Lilly and Company (“Lilly”) removed  
4 this action to this Court, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, on two separate and  
5 independent grounds: (1) Relator Jaydeen Vicente’s (“Relator”) has expressly alleged violations of,  
6 and “liability under,” the federal False Claims Act, 31 U.S.C § 3729. *See* Compl. ¶¶ 64, 210 & p.  
7 43, and (2) Relator has asserted state law claims that “necessarily raise a stated federal issue, actually  
8 disputed and substantial, which a federal forum may entertain without disturbing any  
9 congressionally approved balance of federal and state judicial responsibilities.” *Grable & Sons*  
10 *Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308 (2005). (Lilly’s Notice of Removal of  
11 Action Under 28 U.S.C. § 1441(b), pp. 5-13).

12           2.       This Court’s jurisdiction continues to be proper for both of the reasons set  
13 forth in Lilly’s Notice or Removal. Relator has recently filed a motion from which Lilly has  
14 ascertained that there is an additional basis for this Court’s jurisdiction.

**Relator’s Subsequent Assertion of a Putative Class Action Removable Under CAFA**

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16           3.       On November 16, 2007, Relator filed her Opposition to Lilly’s Motion to  
17 Dismiss. In this filing, Relator makes clear that, although her Complaint was not styled as a class  
18 action and did not allege class claims, she now purports to bring this action on behalf of a class.

19           4.       Relator’s assertion of a putative class action provides an additional basis for  
20 this Court’s jurisdiction – diversity jurisdiction pursuant to the provisions of the Class Action  
21 Fairness Act of 2005 (“CAFA”). This Court has jurisdiction under CAFA because it is a civil action  
22 in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and  
23 costs, and is a putative class action in which a member of the Plaintiff class is a citizen of a state  
24 different from the state of which Lilly, the only defendant, is a citizen. *See* 28 U.S.C. §  
25 1332(d)(2)(A).

**A.       Putative Class Action**

26  
27           5.       Section 1332(d)(1)(B) provides that “the term ‘class action’ means any civil  
28 action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of

1 judicial procedure authorizing an action to be brought by 1 or more representative persons as a class  
 2 action.” California law so provides for such class actions, statutorily authorizing individuals to seek  
 3 relief on behalf of themselves and others similarly situated “when the question is one of common or  
 4 general interest, of many persons, or when the parties are numerous, and it is impracticable to bring  
 5 them all before the court.” Cal. Code Civ. Proc., § 382.

6 6. Relator’s Opposition contains allegations indicating that Relator seeks to  
 7 bring this action on behalf of a putative class. In particular, Relator now states that she brings this  
 8 action “on behalf of all California taxpayers whose money funded the State Medicaid Program” and  
 9 “Relator, as a qui tam plaintiff, is capable of vigorously and tenaciously protecting class interests  
 10 and acting as a fiduciary for both the class and the State of California.” (Relator’s Opposition to  
 11 Lilly’s Motion to Dismiss, pp. 6-7).

12 7. Further demonstrating the class treatment she seeks, Relator’s Opposition  
 13 asserts that this action “meets the requirements of Section 382,” the provision of the California Code  
 14 of Civil Procedure governing class actions, in that it allegedly involves “(1) an ‘ascertainable class’  
 15 of numerous parties and (2) ‘community of interest in the questions of fact and law involved.’”  
 16 (Relator’s Opposition to Lilly’s Motion to Dismiss, p. 6).

17 8. Finally, in a pleading filed with the MDL, Relator has stated that she “seeks  
 18 recovery of past, present, and future medical expenses for recipients of the California Medicaid and  
 19 Medi-Cal program.” (Plaintiffs State of California Ex. Rel Jaydeen Vicente’s Memorandum in  
 20 Support of Motion to Vacate The Judicial Panel on Multidistrict Litigation’s Conditional Transfer  
 21 Order, attached hereto (without exhibits) as Exhibit A, at pp. 3-4). This claim suggests that Relator  
 22 seeks relief on behalf of a class of all “recipients of the California Medicaid and Medi-Cal program.”  
 23 (*Id.*) By seeking relief on behalf of this class, Relator asserts a right to prosecute her claims as a  
 24 class action.

#### 25 **B. Amount In Controversy**

26 9. Relator’s allegations make clear that she seeks amounts far in excess of the  
 27 \$5,000,000 jurisdictional threshold set forth in 28 U.S.C. § 1332(d)(2).

28 10. Relator’s Complaint alleges that “California has been damaged in an amount

1 that is believed to be in excess of tens of millions of dollars annually for claims submitted for  
2 Zyprexa in Northern California alone.” (Compl. ¶ 226).

3 11. Relator further alleges that the State of California funded “millions of dollars”  
4 of Zyprexa purchases. (Compl. ¶¶ 11, 16, 185).

5 **C. Minimal Diversity**

6 12. To satisfy CAFA’s minimal diversity requirements, “any member of a class of  
7 plaintiffs [must be] a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A);  
8 *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007) (CAFA requires only minimal  
9 diversity for covered class actions).

10 13. Here, Relator is a resident of the State of California.<sup>1</sup> (Compl. ¶ 17).  
11 Moreover, Relator’s purported class includes “all California taxpayers whose money funded the  
12 State Medicaid Program.” (Relator’s Opposition to Lilly’s Motion to Dismiss, p. 6).

13 14. Lilly is an Indiana incorporation with its principal place of business in  
14 Indiana, (Compl. ¶ 18), and thus is a resident and citizen of the State of Indiana. *See* 28 U.S.C. §  
15 1332(c)(1).

16 15. Because all class members are citizens of California and Lilly is a citizen of  
17 Indiana, there is diversity jurisdiction under CAFA. The fact that the State of California is not a  
18 citizen of any state does not destroy diversity because CAFA requires minimal, rather than complete,  
19 diversity. *See Ponca Tribe of Indians of Oklahoma v. Continental Carbon Company*, 439 F. Supp.  
20 2d 1171, 1177-78 (W.D. Okla. July 13, 2006) (presence of plaintiff that was not a citizen of any state  
21 did not destroy diversity over class claims under CAFA).

22 **D. Statutory Exceptions To CAFA Do Not Apply**

23 16. No defendant in this matter is a “State[], State official[], or other  
24 governmental entit[y] against whom the district court may be foreclosed from ordering relief.”

25  
26 <sup>1</sup> The Complaint specifically identifies Relator’s residence rather than her domicile. (Compl. ¶ 17) (alleging that Relator  
27 is a “citizen of the United States and a resident of the State of California.”) Other allegations in Relator’s pleadings,  
28 however, support the conclusion that Relator is also domiciled in the State of California. For instance, Relator alleges in  
her Complaint that, beginning in 2000, she was employed by Lilly in the State of California. (Compl. ¶ 17). And  
Relator’s Opposition to Lilly’s Motion to Dismiss alleges that she is a California taxpayer. (Relator’s Opposition to  
Lilly’s Motion to Dismiss, p. 6).

1 Thus, the exception to CAFA jurisdiction under 28 U.S.C. § 1332(d)(5)(A) does not apply.

2 17. Relator purports to bring this action on behalf of at least 100 class members in  
3 that her purported class includes “all California taxpayers whose money funded the State Medicaid  
4 Program.” (Relator’s Opposition to Lilly’s Motion to Dismiss, p. 6). Thus, the exception to CAFA  
5 jurisdiction under 28 U.S.C. § 1332(d)(5)(B) does not apply.

6 18. The “local controversy” exception of section 1332(d)(4)(A) also does not  
7 apply.

8 Under the “local controversy” exception, district courts must decline  
9 jurisdiction where four circumstances are met: (1) more than two-  
10 thirds of the members of the proposed plaintiff class are citizens of the  
11 original filing state; (2) at least one defendant is a defendant from  
12 whom members of the proposed plaintiff class seek significant relief,  
13 whose alleged conduct forms a significant basis of the asserted claims,  
14 and who is a citizen of the original filing state; (3) the principal  
injuries were incurred in the original filing state; and (4) no other class  
action asserting the same or similar factual allegations has been filed  
against any of the defendants within the three years preceding the  
filing of the case.

15 *Hart v. FedEx Ground Package System Inc.*, 457 F.3d 675, 679 (7th Cir. 2006) (citing 28 U.S.C. §  
16 1332(d)(4)(A)). Here, the second circumstance is not met because there are not any “significant  
17 defendants” from the forum state of California. 28 U.S.C. § 1332(d)(4)(A)(II). Lilly, the only  
18 defendant to this case, is not a citizen of the forum state of California.

19 19. Nor does Section 1332(d)(4)(B)’s “home state exception” to CAFA  
20 jurisdiction apply. Under the “home state exception,” a district court shall decline to exercise  
21 jurisdiction where “two-thirds or more of the members of all proposed plaintiff classes in the  
22 aggregate and the primary defendants, are citizens of the State in which the action was originally  
23 filed.” Here, Lilly, the only defendant and therefore also the “primary defendant,” is not a citizen of  
24 the forum state of California. 28 U.S.C. § 1332(d)(4)(B); (Compl. ¶ 18).

25 20. Because the Northern District of California has original jurisdiction over this  
26 action under 28 U.S.C. § 1332(d)(2)(A), and because no statutory exception to such CAFA  
27 jurisdiction applies, this case is removable pursuant to 28 U.S.C. § 1441(a).

28 21. Venue is proper in this district and division under 28 U.S.C. § 1441(a)

1 because the removed action has been pending within this district and division.

2           22. This Supplemental Notice of Removal is timely filed within thirty (30) days  
3 after the receipt by Lilly of the pleading from which Lilly could ascertain this additional basis for  
4 removal. 28 U.S.C. § 1446(b). Relator first alleged her class claims in her Opposition to Lilly's  
5 Motion to Dismiss, filed on November 16, 2007.

6           23. Pursuant to 28 U.S.C. § 1446(a), Defendant is required to file "a copy of all  
7 process, pleadings, and orders served upon" it. Lilly filed the Superior Court papers served upon it  
8 as Exhibit A to its initial Notice of Removal, filed on September 21, 2007.

9           24. By filing this Supplemental Notice of Removal, Defendant does not waive,  
10 either expressly or implicitly, its rights to assert any defenses which it could have asserted in the  
11 Superior Court of the State of California for the County of San Francisco.

12 Dated: December 5, 2007

SIDLEY AUSTIN LLP

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14  
15 By: /s/ Timothy T. Scott

16 Timothy T. Scott  
17 Attorneys For Defendant  
18 ELI LILLY AND COMPANY  
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